



CRWI Update September 30, 2021

MEMBER COMPANIES

Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INV Nylon Chemicals Americas, LLC
3M
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Solutions, LLC

GENERATOR MEMBERS

Eli Lilly and Company
Formosa Plastics Corporation, USA

ASSOCIATE MEMBERS

AECOM
Alliance Source Testing LLC
B3 Systems
Civil & Environmental Consultants, Inc.
Coterie Environmental, LLC
Eurofins TestAmerica
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
Montrose Environmental Group, Inc.
Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
SYA/Trinity Consultants
TEConsulting, LLC
TRC Environmental Corporation
Wood, PLC

INDIVIDUAL MEMBERS

Ronald E. Bastian, PE
Ronald O. Kagel, PhD

ACADEMIC MEMBERS

(Includes faculty from:)

Clarkson University
Colorado School of Mines
Lamar University
Louisiana State University
Mississippi State University
New Jersey Institute of Technology
University of California – Berkeley
University of Dayton
University of Kentucky
University of Maryland
University of Utah

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Pyrolysis/gasification ANPRM

On September 8, 2021, EPA published an advanced notice of proposed rulemaking (ANPRM) seeking information for potential development of regulations for pyrolysis and gasification units that converts solid and semi-solid feed stocks including solid waste, biomass, plastics, tires, and organic contaminants in soils and oily sludges into useful products such as energy, fuels, and chemical commodities. EPA received a request during the Other Solid Waste Incineration (OSWI) comment period asking that the OSWI rule cover all of the other units not covered under the municipal waste combustor, commercial and industrial solid waste incinerator, sewage sludge incinerator and hospital/medical/infectious waste incinerator rules. They did not take that suggestion but it appears to have prompted potential new regulations for the pyrolysis and gasification of solid waste.

The ANPRM lists 39 locations where pyrolysis and gasification is currently being used and asks if this list is complete. In addition, EPA is looking for other entities that operate pyrolysis/gasification units that are not currently covered under Clean Air Act regulations. EPA is requesting real-world cost, design, process, and environmental information where these technologies have been deployed. The docket contains an initial draft of a future 114 request should the Agency decide to go forward with regulations for this source category. EPA is also asking if these units should be regulated under Sections 129 or 111/112 of the Clean Air Act. The comment period closes on November 8, 2021.

PCB proposed rule

On August 31, 2021, the EPA Administrator signed a proposed rule making several modifications to polychlorinated biphenyl (PCB) regulations. The proposed rule would

- Leave two extraction methods in the rule, remove two extraction methods, and add nine methods that are allowed under this rule;
- Amend the performance-based clean up options;
- Remove the provision for allowing PCB bulk product waste to be disposed of as roadbed materials;

- Add flexible provisions for cleaning up PCB spills during emergency situations (e.g., hurricanes);
- Harmonize the general disposal requirements for PCB remediation waste;
- Clarify ambiguity, and
- Correct technical errors and outdated information.

Once published in the *Federal Register*, the proposed rule will have a 60 day comment period.

SSM policy

In 2015, EPA updated its startup, shutdown, and malfunction (SSM) policy based on an interpretation of two US Court of Appeals for the District of Columbia Circuit rulings that held that sources had to meet emissions limits at all times and that EPA did not have the authority to allow for an affirmative defense. Following the publication of the policy, EPA informed 36 states that their state implementation plans (SIP) inappropriately allowed either an affirmative defense or an exclusion during SSM events. Industry challenged that decision. This litigation was held in abeyance while the Trump Administration decided how to proceed. On October 20, 2020, EPA issued a memo that outlined circumstances where SSM provisions and affirmative defenses could be allowed. They then approved SIPs for Texas, North Carolina, and Iowa that allowed these provisions in various forms. The environmental groups challenged these three actions. Those litigations are being held in abeyance while the Biden Administration decides how to respond. On September 30, 2021, EPA Deputy Administrator Janet McCabe sent a memo to the Regional Administrators withdrawing the October 2020 memo and re-instating the 2015 policy. In the memo, Ms. McCabe stated that EPA would revisit the recent Texas, North Carolina, and Iowa SIP approvals based on the return to the 2015 policy. This will likely mean that EPA will ask for a remand of this litigation while they revise those three rules. It also may mean that the industry challenge to the original 36 SIP calls will be restarted. The memo also states that EPA has received SIP revisions from 32 states based on the 2015 policy. Presumably, EPA will restart work on approving those SIPs. While this memo only applies to the use of SSM and affirmative defense provisions in SIPs, the change in policy may also impact how SSM provisions are included in future Clean Air Act Section 112 rules.

PFAS

By statute, EPA was required to respond to a petition from the Governor of New Mexico asking the Agency to regulate per- and polyfluoroalkyl substances (PFAS) under RCRA by September 21, 2021. On that date, the Acting Assistant Administrator for the Office of Land and Emergency Management responded by sending a letter to the Governor acknowledging the petition. While the letter stated that EPA shares New Mexico's concerns about the risk from these chemicals to human health and the environment, it did not give any indication of how the Agency will rule on the petition or how long it

would be until the Agency decides how/if to regulate these compounds. New Mexico has been silent on the issue since the letter was made public.

EPA is struggling with whether to regulate PFAS compounds as a class, a series of subclasses, or as individual compounds. To help them in this decision-making process, the Agency ask the Board of Scientific Counselors (BOSC) to give them advice on if and how to divide the thousands of PFAS compounds into groups for testing, risk assessment, and potential regulations. One of the tasks put before the Board was to review the Office of Research and Development's evaluation of the use of chemical/physical properties, toxicokinetic properties, or toxicity mechanisms as a way to develop subclasses of PFAS compounds. They also ask the BOSC for advice on characteristics that would maximize the groupings for the broadest set of decisions. While the BOSC appeared interested in the questions, there was no timetable announced on when a response would be forthcoming.

The Solid Waste Association of North America (SWANA) has released a report entitled "PFAS Fate and Transport in Waste-to-Energy Facilities." This work is based on a review of the literature and investigations of PFAS emissions from pilot-scale and full-scale waste-to-energy facilities. The Executive Summary concludes that:

- Waste incineration of fluoropolymer based polymers is not expected to be a source of perfluorooctanoic acid in the environment;
- Municipal incineration of polytetrafluoroethylene using the best available technology is not a significant source of PFAS emissions and should be considered as an acceptable form of waste treatment; and
- Waste incineration in Sweden is not a significant source of perfluoroalkyl acids to the atmosphere.

The Executive Summary can be obtained by filling out a form at <https://hub.swana.org/arf-report-pfas-fate>. The entire report is restricted to SWANA members only.

The House of Representatives has passed their version of FY 22 National Defense Authorization Act. It includes provisions:

- Requiring EPA to issue drinking water standards for two PFAS compounds within two years;
- Broadening the definition of PFAS compounds subject to TSCA reporting requirements;
- Eliminating the TSCA reporting exemption for mixtures containing less than one percent PFAS compounds;
- Requiring facilities that manufactured PFAS compounds to submit detection methods specific to the chemicals manufactured;
- Developing a stronger moratorium on incineration of Department of Defense PFAS wastes;

- Requiring mandatory training of Air Force medical personnel on PFAS health hazards; and
- Requiring detail reports on the progress of cleaning up PFAS contaminated sites.

The bill now goes to the Senate where extensive changes are anticipated.

EPA has released a draft Method 1633 to measure 40 PFAS compounds in wastewater, surface water, groundwater, soil, biosolids, sediments, landfill leachate, and fish tissue. The draft method was released based on a single laboratory validation. The Agency and the Department of Defense plan to complete a multi-laboratory validation in 2022. The method can be found at <https://www.epa.gov/cwa-methods/cwa-analytical-methods-and-polyfluorinated-alkyl-substances-pfas>.

Enforcement

EPA Region 2 owns and operates boilers and emergency generators at their Edison, Environmental Center, Edison, NJ. In 2019, the State of New Jersey conducted an inspection and found a number of state law violations. On September 3, 2021, the Department of Justice published a proposed consent decree that includes EPA paying a \$8,600 fine. More details can be found in the *Federal Register* notice.

On September 17, 2021, the Department of Justice announced a proposed settlement agreement with Formosa Plastics Corporation, Point Comfort, TX. The agreement stems from a series of fires, explosions, and accidental releases from May 2013 until October 2016. Under the proposed decree, Formosa will update its risk management plans, conduct a third-party audit of those plans, perform corrective actions based on that audit, and pay a civil penalty of \$2.85 million. Details can be found in the *Federal Register* notice.

In a September 30, 2021, press release, the Department of Justice announced a proposed settlement agreement with Firestone Polymers, LLC in Sulfur, LA. The agreement requires Firestone to meet emissions limits, limit emissions from facility dryers, increased inspections of heat exchangers, and installing controls and monitors on covered flares. The proposed agreement includes a \$3.35 million civil penalty and will require Firestone to fund air monitoring upgrades at several locations in Southwestern Louisiana. The notice is scheduled for publication on October 7, 2021.

Environmental justice

EPA Region 9 and the State of California have signed a memorandum of understanding (MOU) on methods to enhance their environmental justice enforcement strategies.

“Under the MOU, the agencies intend to:

- Enhance existing collaborations by increasing joint inspections in overburdened communities; sharing or jointly developing metrics for determining pollution burdens and vulnerability; and collaborating on staff training.
- Promote coordination of enforcement responses, including joint judicial enforcement actions in overburdened communities.
- Expand engagement with overburdened communities to ensure that targeting of enforcement resources, and compliance-related activities are fully informed by the knowledge and lived experience of these communities.
- Improve communication and transparency by collaborating on an annual workplan and annual report to highlight achievements under the MOU.”

This is the first document of its kind. Observers anticipate other states will sign similar MOUs. Just how this agreement translates into increased inspections and/or enforcements is unknown at this time. Additional information can be found at <https://www.epa.gov/newsreleases/us-epa-calepa-launch-joint-effort-strengthen-environmental-enforcement-communities>.

EPA is now holding “National Environmental Justice Community Engagement Calls” every two weeks to discuss and receive feedback on all aspects of environmental justice. More information can be found at <https://www.epa.gov/environmentaljustice/national-environmental-justice-community-engagement-calls>.

On August 31, 2021, EPA released updated versions of two model settlement agreements for cleaning up Superfund sites. The revised model will require principal responsible parties to share additional information on the work being done at the site and require the use of the EJSCREEN model when developing site-specific information materials. The updated models can be found at <https://www.epa.gov/enforcement/2021-cercla-rdra-cd-and-sow-model-documents>.

Should the Build Back Better Act (the \$3.5 trillion budget reconciliation bill) actually pass Congress, it will likely be the first concrete step in providing large sums of money to environmental justice communities. For example, the House Transportation and Infrastructure Committee draft contains \$2 billion for sewer overflow and stormwater grants and would require that half of that amount would go to “financially distressed” communities. The House Energy and Commerce Committee draft includes \$5 billion to create block grants for communities to invest in environmental and climate justice projects. This version contains \$30 billion to replace lead service lines and earmarking \$20 billion of that total to be spend in disadvantaged communities. This version also contains \$300 million in grants for projects in “low-income or disadvantaged communities.” While this legislation has a long way to go before it can be passed, House Democrats are signaling their willingness to spend money on environmental justice projects.

On September 27, 2021, the Southern Environmental Law Center filed a complaint with US EPA alleging that the current permits for four hog farming operations in North

Carolina is causing a disparate impact on the communities of color in Duplin and Sampson Counties. The complaint asks EPA to overturn the state permit and require more modern methods for handling the wastes produced.

Expanded air monitoring

EPA Region 6 has announced increased air monitoring in Louisiana communities impacted by Hurricane Ida. The monitoring will include using their Airborne Spectral Photometric Environmental Collection Technology (ASPECT) aircraft, restarting chloroprene community air monitoring near the Denka Performance Elastomers plant in LaPlace, SUMMA canisters, and PM 2.5 monitors. The ASPECT aircraft is capable of real-time chemical and radiological detection and infrared and photographic imagery. Additional monitoring is planned at the Shell refinery in Norco, a Marathon refinery in Garyville, the Irish Channel air monitoring site, and Port Fourchon. Additional information can be found at <https://www.epa.gov/newsreleases/epa-expands-air-monitoring-efforts-communities-impacted-hurricane-ida>.

EPA personnel

On September 23, 2021, The Senate confirmed Jane Nishida to be the Assistant Administrator for EPA's Office of International and Tribal Affairs. She had previously worked for the World Bank and the Maryland Department of Environment. On September 22, 2021, the Senate Environment and Public Works Committee favorably reported the nomination of Jeffery Prieto to be the next EPA general counsel. His nomination now goes to the full Senate for a vote. In addition, President Biden announced he plans to nominate Chris Frey to be the next Assistant Administrator for EPA's Office of Research and Development. Previously, Dr. Frey was on the faculty of North Carolina State University and has served on numerous EPA advisory boards. He has been serving as the deputy assistant administrator for science policy since February 2, 2021.

CSB personnel

On September 22, 2021, the Senate Environment and Public Works Committee favorably reported the nominations of Jennifer Sass, Steven Owens, and Sylvia Johnson to be board members of the Chemical Safety and Hazards Board (CSB). Mr. Owens and Ms. Johnson were approved by 12-8 votes while Ms. Sass was approved by a 10-10 vote (along party lines). The Republicans on the Committee questioned the lack of qualifications of all three to serve on the CSB.

California proposed rule for metal shredders

In August, California's Department of Toxic Substances Control proposed an emergency rulemaking to regulate metal shredding operations under hazardous waste management requirements. They received considerable opposition from the California Metal Recyclers Coalition. On September 10, 2021, California withdrew the proposed

rule. California indicated that a new proposal would be forthcoming in the next few weeks with a new comment period.

OB/OD

More than 100 environmental groups sent a letter to EPA Administrator Regan asking him to immediately halt the use of open burn/open detonation (OB/OD) as a method for disposing of munition wastes. The letter claims that using OB/OD for certain materials (specifically mentions military flares and solid rocket motors) releases PFAS compounds into the environment. The letter also claims that military bases are often next to economically depressed areas and lack the resources to effectively achieve environmental justice goals. The letter also points to a recent EPA document offering alternatives to OB/OD. The letter was dated on September 30, 2021.

A-Gas DFFO

A-Gas (Bowling Green, OH) reclaims used chlorofluorocarbon (CFC) refrigerants from commercial, industrial, and automotive sources. The company sells some of the reclaimed refrigerant for reuse, destroys some for a fee, and destroys some for the purpose of creating carbon credits. The destruction process takes place in two argon plasma arc units. Ohio and federal regulations exclude CFC refrigerants from being a hazardous waste provided they are reclaimed and reused as a refrigerant. However, destruction of this material is not excluded from hazardous waste regulations. In April, Ohio EPA published a Director's Final Findings and Orders (DFFO) exempted the company from the requirements to obtain a RCRA Part B permit and allowed the receipt of CFCs without a hazardous waste manifest provided the facility complies with all of the provision in the order for all CFCs at the facility, regardless of the final use. The Environmental Technology Council (ETC) filed an appeal with the Ohio Environmental Review and Appeals Commission (ERAC). A-Gas and Ohio EPA filed motions to dismiss alleging ETC lacked standing. On September 29, ERAC denied both motions. The appeal will now go forward based on merit.

Ross OSHA award

In 2000, Ross Incineration Services entered into Ohio OSHA's On-Site Consultation Program. They were assigned a safety consultant and an industrial hygienist. The company was given a list of improvements to tackle. As a result, they have reduced their Days Away, Restricted, or Transfer from 11.6 in 2000 to 0.8 in 2019 and the Total Recordable Cases rate dropped from 16.1 in 2000 to 1.4 in 2019. Additional information can be found at <https://www.osha.gov/successstories/ross-incineration>.

CRWI meetings

Our next meeting will be on November 10-11, 2021. It will be virtual. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.